

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

In re:	:	Chapter 11
	:	
Circuit City Stores, Inc., <i>et al.</i>	:	Case No. 08-35653 (KRH)
	:	
Debtors.	:	

**LIMITED OBJECTION TO DEBTORS' MOTION FOR ORDERS UNDER  
BANKRUPTCY CODE SECTIONS 105, 363 AND 365 (I) APPROVING BIDDING AND  
AUCTION PROCEDURES FOR SALE OF UNEXPIRED NONRESIDENTIAL REAL  
PROPERTY LEASES, (II) SETTING SALE HEARING DATES AND (III)  
AUTHORIZING AND APPROVING (A) SALE OF CERTAIN UNEXPIRED  
NONRESIDENTIAL REAL PROPERTY LEASES FREE AND CLEAR OF ALL  
INTERETS (B) ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED  
NONRESIDENTIAL REAL PROPERTY  
LEASES AND (C) RELEASE REJECTION PROCEDURES**

T. J. Maxx of CA, LLC, a Delaware limited liability company (the "Objecting Subtenant") by and through its counsel, respectfully submits this limited objection to Debtors' *Motion for Orders Under Bankruptcy Code Sections 105, 363, and 365 (I) Approving Bidding And Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases, (II) Setting Sale Hearing Dates and (III) Authorizing and Approving (A) Sale of Certain Unexpired*

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*Nonresidential Real Property Leases Free and Clear of All Interest (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases and (C) Release Rejection Procedures* (the "Motion").

### **PROCEDURAL HISTORY**

1. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the *United States Code* (the "*Bankruptcy Code*"). The Debtors continue to manage their property as debtors in possession pursuant to Sections 1107 and 108 of the *Bankruptcy Code*.

2. On February 3, 2009, the Debtors filed the Motion.

### **FACTUAL BACKGROUND**

3. Pursuant to a lease dated December 29, 1986, Circuit City Stores, Inc., or one of its successors, leases (as amended or extended, the "Overlease") retail space at South Grant Plaza, 1880 South Grant Street, San Mateo, California (the "Property"). The Debtors are in possession of a portion of the Property where they operate a retail store known as Circuit City location #232 ("San Mateo Circuit City Store"). According to the Debtors' schedules, the term of the Overlease expires on October 31, 2015.

4. Pursuant to a sublease dated July 31, 1987, TJM subleases (as amended or extended, the "TJM Sublease") from the Debtors approximately 24,077 square feet of retail space (the "San Mateo Property") on the Property. The TJM Sublease was assigned to TJM by the TJX Companies, Inc. pursuant to an Assignment and Assumption Agreement dated January 30, 2009 (the "Assignment Agreement"). TJM is in possession of the San Mateo Property, where it currently operates a retail store under the name T. J. Maxx, adjacent to the San Mateo Circuit City Store. The term of the TJM Sublease expires on October 31, 2015.

**OBJECTIONS**

5. The Objecting Subtenant objects to the Motion for the following reasons:

- a. The bidder should provide the adequate assurance information without request so as to give the Subtenant as much time as possible to evaluate prospective buyer.
- b. It is unclear which "March" leases will be slated for which auctions/sale hearings, and when Subtenant will know which auction/sale hearing dates apply to them.
- c. There is insufficient time for the Subtenant to evaluate prospective buyer; Subtenant should have at least 10 days notice to object.
- d. Cure procedures should include a provision that if cure disputes are not resolved out of court or at the sale hearing, then cure objections will be heard promptly, no later than 7 days after the sale hearing to determine cure objections.
- e. It is unclear how Subtenant will get notice that no bids were received on their lease, and how many days notice of rejection they will be provided if no bid is received or accepted by Debtors.
- f. The request for waiver of the stay under Bankruptcy Rules 6004 and 6005 is premature and should be deferred until the sale hearing(s).
- g. TJM incorporates by reference to the extent applicable its objection [Docket No. 1586] to the Debtors' Motion for Orders Pursuant to Bankruptcy Code Sections 105, 363 and 364 (I) (A) Approving Procedures in Connection With Sale of All or Substantially All of the Business or Additional Post-Petition Financing For the Business, (B) Authorizing Debtors to Enter into Stalking Horse or Financing Agreements in Connection with Going Concern Transactions Or Stalking Horse Agreements in Connection With Store Closing and Miscellaneous Asset Sales, (C) Approving The Payment of Termination Fees in Connection Therewith, And (D) Setting Auction and Hearing Dates, (II) Approving Sale of Debtors' Assets Free and Clear of All Interests and (III) Granting Related Relief [Docket No. 1423].
- h. The Court should not make any findings under 363(e) as part of the bidding procedures as such findings should wait until the sale hearing.

6. The Objecting Subtenant also joins in the objections filed by landlords to the Motion to the extent they are not inconsistent with this objection.

**WHEREFORE**, the Objecting Subtenant respectfully requests that any final order granting the Motion be modified pursuant to the terms of this objection, or that the Motion be denied in its entirety, and that the Objecting Subtenant be granted such other and further relief as the Court may deem just and proper.

Dated: February 11, 2009

/s/ William A. Gray

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February, 2009, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and was mailed, by U.S. Mail, first class, postage prepaid, to all persons on the attached Service List:

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